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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,049

04/10/2004

Ronald John Rosenberger

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03/06/2007

EXAMINER

MAKI, STEVEN D

ART UNIT

PAPER NUMBER

1733

MAIL DATE

DELIVERY MODE

03/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

✓

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/822,049	Applicant(s) ROSENBERGER, RONALD JOHN	
	Examiner Steven D. Maki	Art Unit 1733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL *The Brief filed 2-8-07 has been received.*

2. ☒ The Notice of Appeal was filed on 08 December 2006. ~~A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).~~

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see advisory action attachment. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 4-10, 12, 13, 16 and 17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see advisory action attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

ADVISORY ACTION ATTACHMENT

new issues

The new issues include:

- (1) In claims 1, 2, 4-10, 12-13, 16 and 17, adding --scented-- before "vehicle tire" in the preamble;
- (2) In claims 1, 2, 5, 6, 7, 9, 10, 12, 13, 16 and 17, deleting --o-ring--;
- (3) In claim 1, adding --incorporated into--;
- (4) in claim 1, changing "at least one removable insert, o-ring or plug" to --at least one removable insert or plug-- while simultaneously adding --incorporated into said insert, o-ring or plug--; and
- (5) amending claim 10 to recite --wherein said plug or insert comprises at least one color b.--

In claim 6, the deletion of --void,-- and the deletion of --, or a groove, channel, or crevice-- does not raise a new issue.

request to removal finality of last office action

Applicant requests that the final status of the Office Action dated 9-8-06 be removed, due to the fact that the Examiner has made new prior art rejections using different art and different combinations of art. This request is denied because each of the rejections made in the last office action was necessitated by applicant's amendment filed 6-16-06. Claim 1 for example was subject to extensive amendments including:

- (1) deletion of the subject matter of "where said novelty scented rubber compound and/or said novelty scented non-rubber component gives off a unique aroma when said tire is a rest" and
- (2) deletion of the subject matter of "where normal wear of said vehicle tire exposes fresh surface area of said novelty scented rubber compound, and/or said novelty scented non-rubber component, wherein said unique aroma comprises a salient, distinctive, and marketable feature of said vehicle tire" and
- (3) addition of the subject matter of "at least one removable insert, o-ring or plug provided in at least one void contained adjacent to the outside of at least one of a tread, a belt, or a ply of said vehicle tire" and
- (4) addition of the subject matter of "said insert, o-ring or plug comprising at least one scent or fragrance".

The above amendments filed 6-16-06 simultaneously broadened and narrowed claim 1 to require a new combination, which was not present in any of the original dependent claims. With respect to the application of Great Britain 584, the amendment filed 6-16-06 to broaden claim 1 was no minor matter in this application as it resulted in a claim which reads on the natural scent of rubber of a tire instead of the various disclosed scents of lemon, orange, cherry, cinnamon, beer, chocolate, etc. Each of the rejections set forth in the final office action dated 9-8-06 were necessitated by the above noted extensive amendments to claim 1. See MPEP 706.07(a).

With respect to claim 1, applicant comments and examiner agrees that terms such as novelty, unique aroma, and salient, distinctive and marketable features were

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rejected as being indefinite in the office action dated 3-14-06. The examiner adds that instead of amending claim 1 by adding language to clarify the characteristics of the scented compound / component, applicant took the drastic and unexpected action of simply deleting "said novelty scented rubber compound and/or said novelty scented non-rubber component gives off a unique aroma when said tire is a rest" and "where normal wear of said vehicle tire exposes fresh surface area of said novelty scented rubber compound, and/or said novelty scented non-rubber component, wherein said unique aroma comprises a salient, distinctive, and marketable feature of said vehicle tire". This deletion of the subject matter relating to the specific characteristics of the scent resulted in a claim which reads on the natural scent of rubber of a tire instead of the various disclosed scents of lemon, orange, cherry, cinnamon, beer, chocolate, etc. Each of the rejections set forth in the final office action dated 9-8-06 were necessitated by the above noted extensive amendments to claim 1. See MPEP 706.07(a).

remarks

Applicant's arguments regarding the prior art are the same as those presented in the after final amendment filed 12-8-06 and were addressed in the advisory action dated 1-4-07.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.

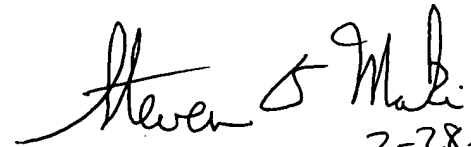
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven D. Maki
February 28, 2007


2-28-07
STEVEN D. MAKI
PRIMARY EXAMINER